

Congress of the United States
Washington, DC 20515

525

July 29, 2019

The Honorable Ajit Pai
Chairman
Federal Communications Commission
455 12th Street SW
Washington, DC 20544

Re: In the Matter of Implementation of Section 621(a) of the Cable Communications
Policy Act of 1984 as amended by the Cable Television Consumer Protection and
Competition Act of 1992, Third Report and Order (MB Docket No. 05-311)

Dear Chairman Pai:

As members of the New York Delegation, we are writing in response to the FCC's Third Report and Order (MB Docket No. 05-311) regarding the way local franchising authorities regulate cable operators. In particular, we are united in our concern that the rulemaking could harm public, educational and government (PEG) stations. It is our sincere hope that you will work to ensure that the interests of local programming are protected when adopting a final rule.

New York PEG channels have long served our communities by airing shows that are produced locally, highlight local news and events, and reflect the unique character of our specific neighborhoods. PEG channels air community meetings, cover local government, and allow educational institutions to create instructive programming. They offer audio/visual career training to students, provide platforms for veterans, seniors, and others who do not otherwise have a voice, and generally help New Yorkers connect with their local governments in ways that are not otherwise available. We are deeply concerned that the outcome of this proposal could jeopardize these important services.

Under the Communications Act, local governments can require as part of cable franchise agreements that cable operators meet demonstrated community needs by setting aside channels for PEG stations. We are concerned that the FCC's proposal would allow the cost of local channels to be deducted as an "in-kind" service from the franchise fees paid to local governments. This loss of revenue would result in a substantial reduction of the scope of PEG channels, or in their complete loss altogether.

Given the importance of PEG stations to our communities across the state and the nation, we ask that the FCC work to protect their interests when adopting a final rule. Thank you for your attention to this important matter.

Sincerely,



Eliot L. Engel
Member of Congress



Nita M. Lowey
Member of Congress



Yvette D. Clarke
Member of Congress



Adriano Espaillat
Member of Congress



Brian Higgins
Member of Congress



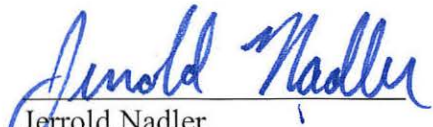
Hakeem Jeffries
Member of Congress



Gregory Meeks
Member of Congress



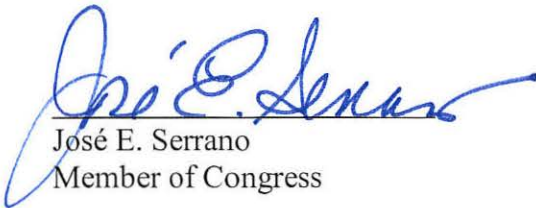
Grace Meng
Member of Congress



Jerrold Nadler
Member of Congress



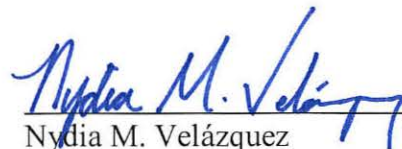
Max N. Rose
Member of Congress



José E. Serrano
Member of Congress



Thomas R. Suozzi
Member of Congress



Nydia M. Velázquez
Member of Congress



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Adriano Espaillat
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

Dear Congressman Espaillat:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

As you know, the Communications Act limits franchise fees to five percent of cable revenues and defines “franchise fee” to include “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.” 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms “tax” and “assessment” were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of “franchise fee” *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of PEG programming, and cable operators.

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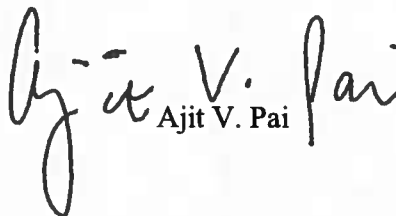
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Page 2—The Honorable Adriano Espaillat

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Again, thank you for your letter. Your views have been entered into the record of the proceeding and have been considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Brian Higgins
U.S. House of Representatives
2459 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Higgins:

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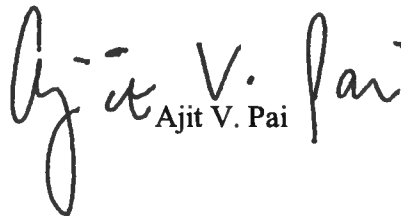
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Eliot L. Engel
U.S. House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Engel:

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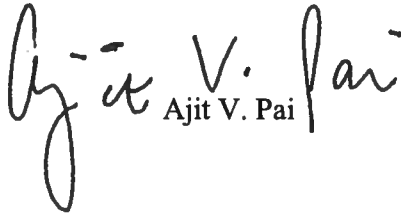
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Grace Meng
U.S. House of Representatives
1317 Longworth House Office Building
Washington, DC 20515

Dear Congresswoman Meng:

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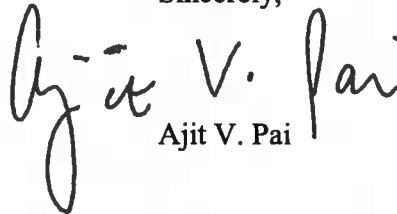
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Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is written in a cursive, flowing style. The first name "Ajit" is written with a large, stylized 'A' and 'j'. The middle initial "V." is written in a smaller, simpler font. The last name "Pai" is written with a large, stylized 'P' and 'i'.

Ajit V. Pai

Attachment



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Gregory W. Meeks
U.S. House of Representatives
2234 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Meeks:

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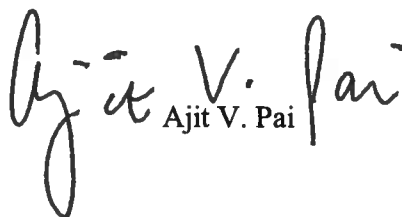
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Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Hakeem Jeffries
U.S. House of Representatives
1607 Longworth House Office Building
Washington, DC 20515

Dear Congressman Jeffries:

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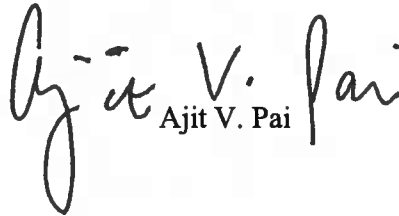
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Page 2—The Honorable Hakeem Jeffries

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Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Max Rose
U.S. House of Representatives
1529 Longworth House Office Building
Washington, DC 20515

Dear Congressman Rose:

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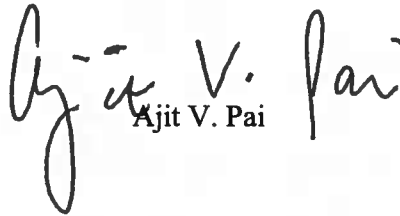
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July 31, 2019

The Honorable Nita M. Lowey
U.S. House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Lowey:

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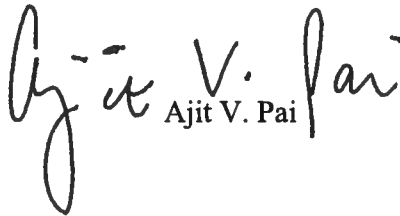
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July 31, 2019

The Honorable Nydia M. Velazquez
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2302 Rayburn House Office Building
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Dear Congresswoman Velazquez:

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As you know, the Communications Act limits franchise fees to five percent of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms "tax" and "assessment" were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of "franchise fee" *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of PEG programming, and cable operators.

The draft order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as certain capital costs required by franchises granted after that date. 47 U.S.C. §§ 542(g)(2)(B) & (C). The draft order therefore concludes that cable-related, in-kind contributions—including PEG-related contributions—are "franchise fees" subject to the Act's five-percent cap unless otherwise expressly excluded.

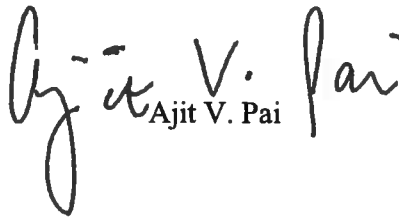
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record.

Page 2—The Honorable Nydia M. Velazquez

The draft order also broadens the Commission's interpretation of an exclusion for certain PEG-related capital costs. These latter two conclusions directly address the concerns raised in your letter concerning the order's potential impact on PEG programming.

Again, thank you for your letter. Your views have been entered into the record of the proceeding and have been considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Ajit V. Pai

Attachment



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Tom Suozzi
U.S. House of Representatives
226 Cannon House Office Building
Washington, DC 20515

Dear Congressman Suozzi:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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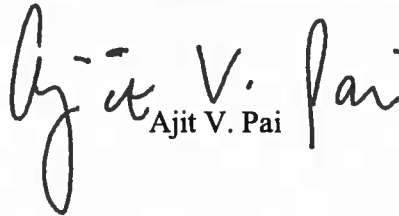
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Page 2—The Honorable Tom Suozzi

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Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Yvette D. Clarke
U.S. House of Representatives
2058 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Clarke:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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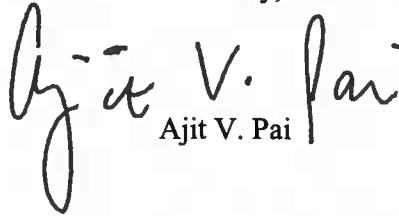
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Page 2—The Honorable Yvette D. Clarke

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Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Jerrold Nadler
U.S. House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Nadler:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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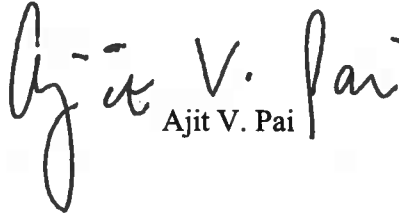
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Page 2—The Honorable Jerrold Nadler

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Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Jose E. Serrano
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Serrano:

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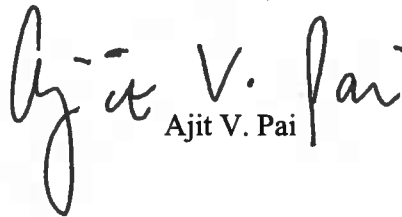
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Page 2—The Honorable Jose E. Serrano

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Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai". The signature is stylized, with the first name "Ajit" written in a cursive-like script, followed by "V." and "Pai". Below the signature, the name "Ajit V. Pai" is printed in a standard sans-serif font.

Ajit V. Pai

Attachment